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Man Who Gave in to Jealous Wife's Demands by Firing Pregnant Secretary Committed Pregnancy Discrimination, Says the New York Court of Appeals

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MAN WHO GAVE IN TO JEALOUS WIFE'S DEMANDS BY FIRING PREGNANT SECRETARY COMMITTED PREGNANCY DISCRIMINATION, SAYS THE NEW YORK COURT OF APPEALS

BY AMANDA JORDAN

This June in *Mittl v. New York State Division of Human Rights*, dubbed the "my wife made me" case,[1] the Court of Appeals unanimously upheld the Division's decision to award nearly $200,000 in mental anguish damages and back pay to a pregnant employee who was fired by her boss's jealous wife when her pregnancy "became a problem" in the office.[2] Mayra Rivera-Maldonado was hired as a secretary in the medical office of ophthalmologist Rainer Mittl in 1990.[3] Upon hearing about Rivera-Maldonado's pregnancy and upcoming time off for prenatal visits, Mittl's wife called her at work, making statements like, "get out of the office, you devil," "all of the clothes you wear, my husband bought them," "I don't believe you have a husband," and "I know where you live. I'm the boss. Get out."[4] Mr. Mittl called Ms. Rivera-Maldonado into his office that afternoon, saying, "let's avoid problems."[5] "It's going to cause a lot of problems if you stay," he said, handing her two paychecks and terminating her employment.[6]

Ms. Rivera-Maldonado filed a complaint with the New York State Division of Human Rights under Executive Law § 296(1), regarding unlawful pregnancy discrimination.[7] She was unlawfully terminated, the Commissioner of the Division of

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[1] Charles Delafuente, *'My Wife Made Me' Defense Ruled Out in Discrimination Case*, 2 ABA JOURNAL EREPORT 23, (June 13, 2003).
[2] Mittl v N.Y. State Div. of Human Rights, 100 N.Y.2d 326, 329 (Ct. App. 2003).
[33] Mittl v N.Y. State Div. of Human Rights, 307 A.D.2d 881 (1st Dept. 2003).
[4] Delafuente, *supra* note 1.
[5] *Mittl*, 100 N.Y.2d at 329.
[6] Jill Miller, *Review of Division of Human Rights Order Flawed*, THE DAILY RECORD OF ROCHESTER, Rochester, N.Y. (June 10, 2003).
[7] N.Y. EXEC. LAW § 296(1) (2004).

Human Rights held in 2000, based on the altercation between herself and Mittl's wife regarding uncorroborated suspicions surrounding her pregnancy.[8] The Commissioner held that Dr. Mittl put Rivera-Maldonado in the middle of a marital conflict and chose to fire her instead of jeopardizing his marriage.[9]

Rivera-Maldonado was the second employee in the office to become pregnant, and Dr. Mittl's wife assumed that he was the father of the baby. "This [reaction] initially evoked a mirthful reaction from [Mittl] and his secretary," the lower court wrote, because Rivera-Maldonado was happily married with another child.[10] Both vehemently denied the accusation.[11] However, Mittl's wife then began placing the abusive phone calls to Rivera-Maldonado while at work. She had no supervisory role in the company, yet threatened to have Rivera-Maldonado fired.[12]

When the Division of Human Rights awarded Rivera-Maldonado $168,414 in back pay for unlawful discrimination, Mittl appealed to the Appellate Division of the New York State Supreme Court. The appellate judges, all of whom are men, unanimously reversed the Division's holding, stating that Mittl had originally been "supportive" of her pregnancy and had offered her advice on her disability claims.[13] The male judges wrote, "husbands presented with just this [choice] have found support in the courts," and that Mittl's behavior could be viewed, "at worse, as disloyal to a valued secretary."[14] It was a devastating and surprisingly casual blow to pregnancy rights in the workplace.

Executive Law § 296, also known as the New York State Human Rights Law, Article 15, creates a cause of action for sexual discrimination for adverse employment actions based on pregnancy.[15] A plaintiff's burden to establish a *prima facie* case of

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[8] *Mittl*, 100 N.Y.2d at 330.
[9] *Id.* at 329.
[10] Mittl v. N.Y. State Div. of Human Rights, 293 A.D.2d 255 (1st Dept. 2002).
[11] *Id.*
[12] *Id.*
[13] *Mittl*, 100 N.Y.2d 326.
[14] *Id.*
[15] N.Y. EXEC. LAW § 296 (2004).

discrimination is "not onerous."[16] A plaintiff may prevail if she shows believable evidence that "an adverse employment decision resulted because of discrimination."[17] When the plaintiff has proved a *prima facie* case of discrimination, the defendant bears only the burden of explaining clearly the nondiscriminatory reasons for its actions.[18] Once the prima facie case is made, the burden of proof shifts to the employer to rebut the presumption that the plaintiff was discharged for a legitimate, nondiscriminatory reason.[19] Here in the lower courts, all Mittl had to do was explain that he was choosing to save his marriage. The court held that since this was the reason, it did not constitute pregnancy or sex discrimination – Ms. Rivera-Maldonado was not fired because she was a woman or even because her pregnancy impeded her ability to do her job, but because it was easier for her boss to remove her from payroll than it was to deal with his jealous wife.

The Appellate Division in Manhattan held that because he had given "every indication that her job would be waiting when she returned from maternity leave," Dr. Mittl's firing of Ms. Rivera-Maldonado did not constitute pregnancy or sex discrimination.[20] After Mittl won in 2002, even he was quoted as being "totally surprised" by his victory.[21] His lawyer at the time had no comment on the matter.[22] It may speak volumes that even the defendant here was surprised by this ruling, in which the Appellate Division essentially says that it is acceptable for men to use the "my wife made me do it" defense and still avoid discrimination charges.[23] The Appellate Division alluded to the fact that because "husbands...have found support in the courts,"

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[16] Quaratino v. Tiffany & Co., 71 F.3d 58 (2nd Cir. 1995).
[17] *Id.*
[18] Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981).
[19] *Id.*
[20] *Mittl*, 293 A.D.2d 255.
[21] Barbara Ross, *Court: OK to Ax Worker for Jealous Wife*, DAILY NEWS, New York, N.Y. (April 3, 2002).
[22] *Id.*
[23] Delafuente, *supra* note 1.

men have won in many other similar cases in which the employer and employee had in fact conducted intimate extramarital affairs.[24]

The Court of Appeals reversed this decision a year later, in July 2003, and remitted the case back to the Appellate Division.[25] The Court of Appeals held that the fact that Mittl had told her she was "becoming a problem," along with his jealous wife's anger over her pregnancy and time off for prenatal appointments, was sufficient to constitute a *prima facie* case of discrimination.[26] The Appellate Division's decision fell into a strange line of decisions from both state and federal courts concluding that when a man fires a woman to avoid making his wife jealous, for example, he has not committed sex discrimination.[27]

Court of Appeals Chief Judge Judith S. Kaye, perhaps not insignificantly a woman, wrote that the Appellate Division "correctly articulated, but then misapplied the relevant standards...Because substantial evidence supports the commissioner's determination that the discharge was discriminatory, it is irrelevant that the record could also support petitioner's explanation – preferred by the Appellate Division – that he discharged complainant in order to save his marriage and not because of her pregnancy.[28]

The significance of this landmark pregnancy case is clear: discrimination against pregnant women, no matter the circumstances, is against the Human Rights Law. Interestingly, however, *Mittl* does demonstrate one of the flaws with the Division system: The complaint was originally filed with the system in April 1990.[29] It was not until 1998 that the Division commissioner sent the case to hearing.[30] The initial hearing determination was not made until October 2000.[31] The complainant may have

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[24] *Mittl*, 293 A.D.2d at 256; *see Kahn v. Objective Solutions, Int'l.*, 86 F. Supp. 2d 377 (S.D.N.Y. 2000).
[25] *Mittl*, 100 N.Y.2d 326.
[26] *Id.*
[27] Kahn v. Objective Solutions, Int'l, 86 F. Supp. 2d 377 (S.D.N.Y. 2000).
[28] *Mittl*, 100 N.Y.2d 326.
[29] *Id.*
[30] *Id.*
[31] *Id.*

prevailed and set important precedent for other pregnant victims, but at the expense of ten years of anxious waiting and the Appellate Division's victory for Mittl. One may wonder, did the system fail her simply by making her wait ten long years?

It is important to note that, although the Court of Appeals distinctly stated that the Appellate Division was incorrect in its ruling for Mittl and avoided the issue of damages in the matter, Judge Kaye still called the $168,414 back pay award "exceedingly high."[32]

When the case was remitted to the Appellate Division in 2003, the court affirmed the Court of Appeals decision to award Rivera-Maldonado damages for the discriminatory act committed against her but significantly decreased her damages award from $168,414 to $21,862.76.[33] The Appellate Division denied reargument of this case on December 9, 2003.[34]

Although it finally ended with a victory for Ms. Rivera-Maldonado and the Division of Human Rights, one may wonder whether the sheer fact that the Appellate Division first ruled against her and then later reduced her damages is a sign that pregnancy discrimination does not have a secure place in human rights law. Only time and future decisions will solidify or weaken the Court of Appeals landmark ruling.

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[32] *Id.*

[33] *Mittl*, 307 A.D.2d 881.

[34] Mittl v. N.Y. State Div. of Human Rights, 2003 N.Y. App. Div. LEXIS 13458 (Dec. 9, 2003).